

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

V.

CRIMINAL 07-0332 (ADC)

MANRIQUE RÍOS-MERCADO,

Defendant

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: RULE 11(c)(1)(B) PROCEEDINGS (PLEA OF GUILTY)

I. Personal Background

13 On August 9, 2007, Manrique Ríos-Mercado, the defendant herein, was
14 charged in a one-count indictment. The defendant agrees to plea guilty to count one
15 of the indictment.

16 Count one charges defendant of from in or about December, 2003 to in or
17 about May, 2004, in Ponce, in the District of Puerto Rico, and within the jurisdiction
18 of this court, the defendant herein knowingly and willfully executed a scheme and
19 artifice to defraud and to obtain moneys and funds owned by and under the custody
20 of Banco Bilbao Vizcaya Argentanaria (BBVA), a financial institution that is
21 federally insured, as that term is defined in 18 U.S.C. § 20, by means of false and
22 fraudulent pretenses, representations and promises, in violation of 18 U.S.C. § 1344.

23 Defendant filed a motion for change of plea on November 27, 2007. (Docket
24 No. 19.)

II. Consent to Proceed Before a Magistrate Judge

26 On January 11, 2008, while assisted by Víctor González, Assistant Federal
27 Public Defender, the defendant, by consent, appeared before me in order to change
28 his previous not guilty plea to a plea of guilty as to count one of the indictment.

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3 In open court the defendant was questioned as to the purpose of the hearing
 4 being held. The defendant responded that the purpose of the hearing was to plead
 5 guilty. The defendant was advised of his right to have all proceedings, including the
 6 change of plea hearing, before a United States district judge. Defendant was given
 7 notice of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries
 8 were to be conducted under oath and that it was expected that his answers would
 9 be truthful (he was also explained that the consequences of lying under oath could
 10 lead to a perjury charge); and (c) his right to have the change of plea proceedings
 11 presided over by a district judge instead of a magistrate judge. The defendant was
 12 also explained the differences between the appointment and functions of the two.
 13 The defendant consent to proceed before this magistrate judge.

14 III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

15 A. Compliance With Requirements Rule 11(c)(1)

16 Rule 11 of the Federal Rules of Criminal Procedure governs the
 17 acceptance of guilty pleas to federal criminal violations. Pursuant to
 18 Rule 11, in order for a plea of guilty to constitute a valid waiver of the
 19 defendant's right to trial, guilty pleas must be knowing and voluntary:
 20 "Rule 11 was intended to ensure that a defendant who pleads guilty
 21 does so with an 'understanding of the nature of the charge and
 22 consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4
 23 (1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467
 24 (1969)). [There are three core concerns in these proceedings]: 1)
 25 absence of coercion; 2) understanding of the charges; and 3) knowledge
 26 of the consequences of the guilty plea. United States v. Cotal-Crespo, 47
 27 F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st
 28 Cir. 1991)).

United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

In response to further questioning, defendant was explained and he
 understood that if convicted on count one, the penalty is a term of imprisonment of
 not more than 30 years, a fine not to exceed \$1,000,000, and a term of supervised
 release of no more than five years.

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3 Prior or at the time of sentencing, the defendant shall pay a special assessment
4 of \$100, per offense, pursuant 18 U.S.C. § 3013(a).

5 Defendant was advised that the ultimate sentence was a matter solely for the
6 court to decide in its discretion and that, even if the maximum imprisonment term
7 and fine were to be imposed upon him, he later could not withdraw his guilty plea
8 if he was unhappy with the sentence of the court. The defendant understood this.

9 Defendant was explained what the supervised release term means. It was
10 emphasized that cooperation with the United States Probation officer would assist
11 the court in reaching a fair sentence.

12 The defendant is aware that the court may order him to pay a fine sufficient
13 to reimburse the government for the costs of any imprisonment, probation or
14 supervised release and also the court may impose restitution. As part of this plea
15 agreement, the defendant agrees to provide a financial statement as requested to the
16 United States.

17 Emphasis was made on the fact that at this stage, no prediction or promises
18 as to the sentence to be imposed could be made by anyone. Defendant responded to
19 questions in that no promises, threats, inducements or predictions as to what
20 sentence will be imposed have been made to him.

21 B. Admonishment of Constitutional Rights

22 To assure defendant's understanding and awareness of his rights, defendant
23 was advised of his right:

24 1. To remain silent at trial and be presumed innocent, since it is the
25 government who has the burden of proving his guilt beyond a reasonable doubt.

26 2. To testify or not to testify at trial, and that no comment could be made by
27 the prosecution in relation to his decision not to testify.

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3. To a speedy trial before a district judge and a jury, at which he would be
4 entitled to see and cross examine the government witnesses, present evidence on his
5 behalf, and challenge the government's evidence.

4. To have a unanimous verdict rendered by a jury of twelve persons which
7 would have to be convinced of defendant's guilt beyond a reasonable doubt by means
8 of competent evidence.

5. To use the subpoena power of the court to compel the attendance of
10 witnesses.

11 Upon listening to the defendant's responses, observing his demeanor and his
12 speaking with his attorney, that to the best of counsel's belief defendant had fully
13 understood his rights, it is determined that defendant is aware of his constitutional
14 rights.

15 C. Consequences of Pleading Guilty

16 Upon advising defendant of his constitutional rights, he was further advised
17 of the consequences of pleading guilty. Specifically, defendant was advised that by
18 pleading guilty and upon having his guilty plea accepted by the court, he will be
19 giving up the above rights and would be convicted solely on his statement that he is
20 guilty.

21 Furthermore, the defendant was admonished of the fact that by pleading guilty
22 he would not be allowed later on to withdraw his plea because he eventually might
23 disagree with the sentence imposed, and that when he were under supervised
24 release, and upon violating the conditions of such release, that privilege could be
25 revoked and he could be required to serve an additional term of imprisonment. He
26 was also explained that parole has been abolished.

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D. Plea Agreement

The parties have entered into a written plea agreement that, upon being signed by the government, defense attorney and defendant, was filed and made part of the record. Defendant was clearly warned and recognized having understood that:

1. The plea agreement is not binding upon the sentencing court.

2. The plea agreement is an "agreement" between the defendant, defense attorney and the attorney for the government which is presented as a recommendation to the court in regards to the applicable sentencing adjustments and guidelines, which are advisory.

3. The agreement provides a sentencing recommendation and/or anticipated sentencing guideline computation, that can be either accepted or rejected by the sentencing court.

4. In spite of the plea agreement and any sentencing recommendation contained therein, the sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the possible maximum penalty prescribed by statute.

Defendant acknowledged having understood this explanation.

E. Government's Evidence (Basis in Fact)

The government presented a proffer of its evidence with which the defendant basically concurred.

Accordingly, it is determined that there is a basis in fact and evidence to establish all elements of the offense charged.

F. Voluntariness

The defendant accepted that no leniency had been promised, no threats had been made to induce him to plead guilty and that he did not feel pressured to plead

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3 guilty. He came to the hearing for the purpose of pleading guilty and listened
4 attentively as the prosecutor outlined the facts which it would prove if the case had
5 proceeded to trial.

6 IV. Conclusion

7 The defendant, by consent, has appeared before me pursuant to Rule 11,
8 Federal Rules of Criminal Procedure, and has entered a plea of guilty as to count one
9 of the indictment.

10 After cautioning and examining the defendant under oath and in open court,
11 concerning each of the subject matters mentioned in Rule 11, as described in the
12 preceding sections, I find that the defendant Manrique Ríos-Mercado is competent
13 to enter this guilty plea, is aware of the nature of the offense charged and the
14 maximum statutory penalties that the same carries, understands that the charge is
15 supported by the government's evidence, has admitted to every element of the
16 offense charged, and has done so in an intelligent and voluntary manner with full
17 knowledge of the consequences of his guilty plea.

18 Therefore, I recommend that the court accept the guilty plea of the defendant
19 and that the defendant be adjudged guilty as to count one of the indictment.

20 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B)
21 and Rule 72(d) of the Local Rules of Court. Any objections to the same must be
22 specific and must be filed with the Clerk of Court within five (5) days of its receipt.
23 Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific
24 objections to the report and recommendation is a waiver of the right to review by the
25 district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

26 At San Juan, Puerto Rico, this 18th day of January, 2008.

27
28 S/ JUSTO ARENAS
Chief United States Magistrate Judge